

ITEL

2-049A066

Rail Division

Two Embarcadero Center
San Francisco, California 94111
(415) 955-9090
Telex 34234

No. FEB 18 1982

Date.....
Fee \$..11.00

ICC Washington, D. C.

February 12, 1982

RECORDATION NO. 9756-D FILED 1425

Ms. Agatha Mergenovich, Secretary
Interstate Commerce Commission
Washington, D.C. 20423

FEB 18 1982 -2 35 PM

INTERSTATE COMMERCE COMMISSION

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. Section 11303(a) and the Interstate Commerce Commission's rules and regulations thereunder, I enclose herewith on behalf of Itel Corporation, for filing and recordation under the Lease Agreement dated as of April 26, 1978 (the "Lease") between Itel Corporation, Rail Division ("Itel") and East Camden and Highland Railroad Company ("Lessee"), which was filed on October 11, 1979 at 2:45 P.M. and given recordation number 9756, four counterparts of the following document:

Amendment No. 3 dated as of October 21, 1981 to the Lease between Itel and Lessee.

The names and addresses of the parties to the aforementioned amendment are:

1. East Camden and Highland Railroad Company
East Camden Industrial Park
Building 142
East Camden, Arkansas 71701
2. Itel Corporation, Rail Division
Two Embarcadero Center
San Francisco, California 94111

The equipment covered by the Amendment is twenty five (25) 100 ton boxcars (A.A.R. mechanical designation XM, 50'6" in length), bearing the reporting marks GBW 10000 through and including GBW 10024.

Also enclosed is a check in the amount of \$10.00 for the required recording fee.

PSP/1/7-2

Please file this one first.

20, 12, 1982 11 33

*Ms. Lee
this one
is under
9756 but
I do not
know the
next letter*

*Agatha Mergenovich
John Mergenovich*

Ms. Agatha Mergenovich
February 12, 1982
Page Two

Please stamp all counterparts of the enclosed Amendment with your official recording stamp. You will wish to retain one (1) counterpart of the document for your files; it is requested that the remaining three (3) counterparts be delivered to the bearer of this letter.

Sincerely,


Patricia Salas Pineda
Counsel

PSP:sc
Enclosures

cc: Michael Walsh, Esq.
Weil, Gotshal & Manges
767 Fifth Avenue
New York, New York 10020

Robert S. Clark, Esq.
First Security Bank of Utah, N.A.
79 South Main Street
Salt Lake City, Utah 84111

Doug Drummond
Itel Corporation

Linda Lawrence
Itel Corporation

PSP/1/9

Interstate Commerce Commission

Washington, D.C. 20423

OFFICE OF THE SECRETARY

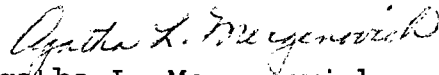
Patricia Salas Pineda
IteI-Rail Division
Two Embarcadero Center
San Francisco, California 94111

February 18, 1982

Dear Madam:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on ,2/18/82 at 2:35PM , and assigned re-recording number(s). 9756-D

Sincerely yours,


Agatha L. Mergenovich
Secretary

Enclosure(s)

L-0241
10/23/81

RECORDATION NO. 9756-D
FFB 18 1982 -2 35 PM
INTERSTATE COMMERCE COMMISSION

AMENDMENT NO. 3

THIS AMENDMENT NO. 3 (the "Amendment") to that certain Lease Agreement (the "Agreement") made as of April 26, 1978 between ITEL CORPORATION, RAIL DIVISION ("Lessor") and EAST CAMDEN AND HIGHLAND RAILROAD COMPANY ("Lessee") is made this 21st day of October, 1981 by and between Lessor and Lessee.

W I T N E S S E T H :

WHEREAS, Lessor and Lessee are parties to the Agreement, pursuant to which five hundred (500) boxcars ("Cars") described therein have been leased and delivered by Lessor to Lessee.

WHEREAS, Lessor and Lessee agree that it is to their mutual benefit for Lessee to enter into a sublease agreement with a third party for a certain number of Cars for a period of time to improve the utilization of and revenue from the Cars.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, the parties agree to amend the Agreement as follows:

1. All terms defined in the Agreement shall have their defined meanings when used in this Amendment.
2. Lessor consents to Lessee's entering into a sublease agreement (the "Sublease") with Green Bay and Western Railroad Company (hereinafter called "Sublessee") for twenty-five (25) of the Cars bearing reporting marks within the series EACH 2351-2500 inclusive (collectively called "Boxcars" and individually "Boxcar") for a period of time to improve the utilization of and revenue from the Boxcars.
3. The term of the Sublease with respect to each Boxcar shall commence at 12:00 P.M. on the date and at the location that such Boxcar is remarked with the Sublessee's reporting marks and shall expire as to all the Boxcars on December 31, 1982 (the "Sublease Period").
4. The restencilling, delivery and return of the Boxcars pursuant to the Sublease, and the costs related thereto shall be the responsibility of Lessee. Concurrent with any restencilling at the commencement, expiration or early termination of the Sublease, Lessee shall provide Lessor with a Certificate of Remarketing (in the form of Exhibit A attached hereto) specifying the previous and current reporting marks for each Boxcar remarked pursuant to the Sublease. Such Certificate of Remarketing shall become attached to and incorporated into this Amendment.
5. During the Sublease Period only and solely with respect to the Boxcars, Section 4 of the Agreement, as it now reads ("Old Section 4") shall be replaced by the following:

KEEP
FOR
ICC
FILE
COPY

"4. Record Keeping

- A. Lessee shall, at its expense, prepare and file, with respect to the Boxcars, all documents relating to the registration, maintenance and record keeping functions normally performed by a railroad with respect to railroad equipment of the type subject to this Agreement. Such matters shall include, but are not limited to, the preparation of the following documents: (i) appropriate AAR interchange agreements with respect to the Boxcars; (ii) registration of the Boxcars in the Official Railway Equipment Register and the Universal Machine Language Equipment Register ("UMLER"); and (iii) such reports as may be required from time to time by the Interstate Commerce Commission ("ICC") and/or any other regulatory agencies with respect to the Boxcars.
- B. Lessee shall perform all record keeping functions relating to the use of the Boxcars by Lessee and other railroads, including, but not limited to, car hire reconciliation, collection of Revenues (as hereinafter defined in Section 6) from other railroad companies, maintenance and repair, and billing in accordance with AAR railroad interchange agreements and rules. All record keeping performed by Lessee hereunder and all records of payments, charges and correspondence relating to the Boxcars shall be separately recorded and maintained by Lessee in a form suitable for reasonable inspection by Lessor from time to time during regular business hours. Lessee shall supply Lessor with copies of such reports, including daily telephone reports, regarding the number of Boxcars on Lessee's tracks and the use of the Boxcars by Lessee on its railroad line as Lessor may reasonably request."

Upon the expiration or early termination of the Sublease, Old Section 4 shall be reinstated in the Agreement with respect to the Boxcars.

6. During the Sublease Period only and solely with respect to the Boxcars, Section 6 of the Agreement, as it now reads ("Old Section 6") shall be replaced by the following:

"6. Lease Rental

- A. Definitions
 - (i) "Revenues" shall be the total revenues earned and due from other railroad companies for the use or handling of the Boxcars, whether or not collected and received by Lessee and without regard to any claimed abatement, reduction or offset, provided, however, that upon the occurrence of any such abatement, reduction or offset, Lessee shall, within ten (10) days of Lessor's request, reimburse Lessor for any such amounts.
 - (ii) The "Base Rental" shall be defined as the sum equal to the Revenues which the Boxcars would have earned in the aggregate at a Utilization Rate (as defined below) of fifty-eight (58) percent.

- (iii) The "Utilization Rate" of the Boxcars shall be determined by a fraction, the numerator of which is the aggregate number of days in each calendar year that Revenues were earned on the Boxcars commencing from the Initial Loading, and the denominator of which is the aggregate number of days in each calendar year that the Boxcars are on lease to Lessee, commencing from the Initial Loading.
- B. Lessor shall receive all Revenues generated by the Boxcars prior to the Initial Loading.
- C. Lessee agrees to pay the following rent to Lessor for the use of the Boxcars:
 - (i) In the event that Revenues in any calendar year or applicable portion thereof are equal to Base Rental, Lessee shall pay to Lessor an amount equal to Base Rental;
 - (ii) In the event that Revenues in any calendar year or applicable portion thereof are less than Base Rental, Lessee shall pay to Lessor a sum equal to one hundred percent (100%) of the total Revenues.
 - (iii) In the event that Revenues in any calendar year or applicable portion thereof exceed the Base Rental, Lessee shall pay to Lessor an amount equal to the Base Rental and Lessee shall receive all Revenues received in excess of the Base Rental.
- D.
 - (i) The calculations required by Section 6.C. shall be made within five (5) months after the end of each calendar year ("Yearly Calculation(s)"). Lessor shall within three (3) months after the end of each calendar quarter, calculate on a quarterly year-to-date basis, the approximate amount, if any, due Lessee and Lessor under Section 6.C.(iii). Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculations, provided, however, that following each Yearly Calculation, any amount paid to either party in excess of the amounts required by such Yearly Calculation shall be promptly refunded to the appropriate party.
 - (ii) Upon Lessor's request, Lessee shall provide Lessor with any records of Lessee, including car hire summaries and detailed reports, as Lessor deems necessary to substantiate Revenues and Revenues actually received by Lessee. Further, Lessor shall be entitled to visit Lessee at any time during normal business hours to review any and all records required to complete the calculations outlined in Section 6.D.(i).


- E. In the event it is determined that a Boxcar is lost, destroyed or damaged beyond repair in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Rule 7 of the AAR Code of Car Hire Rules and Interpretations-Freight, said Boxcar shall be removed from the rental calculations of this Agreement on the date car hire ceases as set forth in the aforementioned Rule 7.
- F. If, with respect to any calendar quarter, Revenues are less than Base Rental, Lessor may, at any time, at its option and upon not less than ten (10) days prior written notice to Lessee, terminate this Agreement as to such Boxcars as Lessor shall determine; provided, however, that Lessee may, at its option, within ten (10) days of receipt of such notice from Lessor, void such termination notice by paying to Lessor an amount equal to the difference between actual Revenues for such calendar quarter and the Base Rental for such calendar quarter.
- G. If, subsequent to the Initial Loading, any Boxcar remains on Lessee's or Sublessee's railroad tracks for more than seven (7) consecutive days, excluding those days such Boxcar is undergoing servicing, repair or alteration as provided for in Section 5, unless such servicing, repair or alteration was occasioned by the fault of Lessee or Sublessee, Lessor may, at its option and upon not less than twenty-four (24) hours prior written notice, terminate this Agreement as to such Boxcar and withdraw such Boxcar from Lessee's railroad tracks or require Lessee to make Boxcar available for removal by Lessor. If any such Boxcar has remained on Lessee's or Sublessee's railroad tracks for more than seven (7) consecutive days because Lessee or Sublessee has not given preference to the Boxcars as specified in Section 3.B., Lessee shall be liable for and remit to Lessor an amount equal to the per diem and mileage payments the Boxcar would have earned if such Boxcar had been in the physical possession and use of another railroad for the entire period, with the assumption that each Boxcar traveled fifty (50) miles per day."

Upon the expiration or early termination of the Sublease, Old Section 6 shall be reinstated in the Agreement with respect to the Boxcars.

- 7. Nothing set forth in this Amendment with respect to the Agreement represents a waiver by the parties hereto of any rights under the Agreement or the Bankruptcy Code and is not an assumption of the Agreement under the Bankruptcy Code, and in the event of the rejection of the Agreement by order of the Bankruptcy Court under the Bankruptcy Code, Lessee may claim pre-petition damages, if any, with respect to such rejection of the Agreement.
- 8. Except as expressly modified by this Amendment, all terms and provisions of the Agreement shall remain in full force and effect with respect to all of the Cars subject to the Agreement, including the Boxcars.

9. This Amendment may be executed by the parties hereto in any number of counterparts and all said counterparts taken together shall be deemed to constitute one and the same instrument.

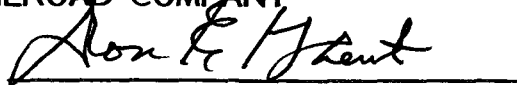
ITEL CORPORATION,
RAIL DIVISION

By: 

Title: President

Date: 11-6-81

EAST CAMDEN AND HIGHLAND
RAILROAD COMPANY

By: 

Title: Exec VP

Date: 11-3-81

L-0241

EXHIBIT A

CERTIFICATE OF REMARKING

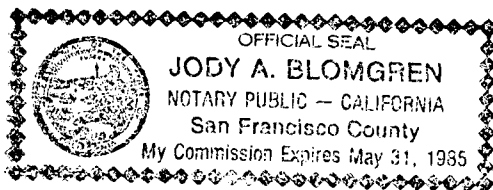
<u>Old Boxcar Marks</u>	<u>New Boxcar Marks (at commencement of Sublease)</u>	<u>Date of Remarking</u>	<u>New EACH Boxcar Marks (pursuant to expiration of Sublease)</u>	<u>Date of Remarking</u>
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Itel Corporation, Rail Division
Authorized Representative

East Camden and Highland Railroad
Company
Authorized Representative

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On this 6th day of November, 1981, before me personally appeared Edward M. O'Dea, to me personally known, who being by me duly sworn says that such person is President of Itel Corporation, Rail Division, that the foregoing Amendment No. 3 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Jody A. Blomgren
Notary Public

STATE OF California)
) ss:
COUNTY OF Riverside)

On this 3rd day of November, 1981, before me personally appeared Don E. Chant, to me personally known, who being by me duly sworn says that such person is Executive VP of East Camden and Highland Railroad Company, that the foregoing Amendment No. 3 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Ellie Coulter
Notary Public

